



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF

JUN 15 2006

(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Steven Smith, Director
Toledo Edison Co., Bay Shore Power Plant
4701 Bay Shore Road
Toledo, OH 43616

Re: Finding of Violation and Notice of Violation
Toledo Edison Co., Bay Shore Power Plant
Toledo, Ohio

Dear Mr. Smith:

The United States Environmental Protection Agency (U.S. EPA) is issuing the enclosed Finding of Violation (FOV) and Notice of Violation (NOV) to Toledo Edison Co., Bay Shore Power Plant, located in Toledo, Ohio (you). We find you have violated the following at your Toledo, Ohio facility:

1. Section 111(e) of the Clean Air Act (CAA), 42 U.S.C. § 7411(e), and applicable regulations at 40 CFR § 60.40a et seq.;
2. Part C of the CAA, 42 U.S.C. § 7470 et seq., and applicable regulations at 40 CFR § 52.21;
3. Title V, Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and applicable regulations at 40 CFR § 70.7(b);
4. Visible emissions provisions contained in Ohio Administrative Code (OAC) 3745-17-07(A) of the Ohio State Implementation Plan (Ohio SIP);
5. Fugitive dust provisions contained in OAC 3745-17-08(B) of the Ohio SIP;

Protecting the environment is everyone's responsibility. Help EPA fight pollution by reporting possible harmful environmental activity. To do so, visit EPA's website at <http://www.epa.gov/compliance/complaints/index.html>.

6. Particulate Matter emissions provisions contained in OAC 3745-17-10(C)(1) of the Ohio SIP; and

7. Permit to Install Number 04-01056 (July 31, 2003).

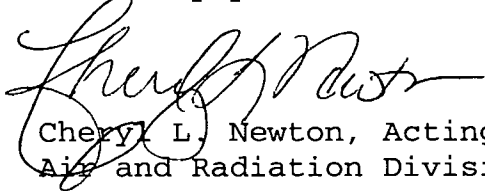
Sections 113(a)(1) and 113(a)(3) of the Clean Air Act give us several enforcement options. These options include issuing an administrative compliance order or an administrative penalty order, and/or bringing a judicial, civil or criminal action. The options we select may depend on, among other things, the length of time you take to achieve and demonstrate continuous compliance with the rules cited in the FOV and NOV.

We are offering you an opportunity to confer with us about the violations alleged in the FOV and NOV. The conference will give you the opportunity to present information on the specific findings of violation, the efforts you have taken to comply, and the steps you will take to prevent future violations.

Please plan for your facility's technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

The U.S. EPA contact in this matter is Ms. Julie Morris. You may call her at (312) 886-0863 to request a conference. You should make the request as soon as possible, but no later than 10 calendar days after you receive this letter. We should hold any conference within 30 calendar days of your receipt of this letter.

Sincerely yours,



Cheryl L. Newton, Acting Director
Air and Radiation Division

Enclosure

cc: Robert Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Agency

Karen Granata, Administrator
City of Toledo Division of Environmental Services

Anthony J. Alexander, President
FirstEnergy Corp.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	
)	
Toledo Edison Co., Bay Shore)	NOTICE OF VIOLATION and
Power Plant)	FINDING OF VIOLATION
Toledo, Ohio)	
)	EPA-5-06-OH-10
)	
Proceedings Pursuant to)	
the Clean Air Act,)	
42 U.S.C. §§ 7401 et seq.)	

NOTICE AND FINDING OF VIOLATION

The United States Environmental Protection Agency (U.S. EPA) finds that Toledo Edison Co., Bay Shore Power Plant is violating the following:

1. Section 111(e) of the Clean Air Act (CAA), 42 U.S.C. § 7411(e), and applicable regulations at 40 CFR § 60.40a et seq.;
2. Part C of the CAA, 42 U.S.C. § 7470 et seq., and applicable regulations at 40 CFR § 52.21;
3. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and applicable regulations at 40 CFR § 70.7(b);
4. Ohio Administrative Code (OAC) 3745-17-07(A) of the Ohio State Implementation Plan (Ohio SIP);
5. OAC 3745-17-08(B) of the Ohio SIP;
6. OAC 3745-17-10(C)(1) of the Ohio SIP; and
7. Permit to Install Number 04-01056 (July 31, 2003).

Regulatory Authority

Standards of Performance for New Sources

8. Section 111(e) of the CAA, 42 U.S.C. § 7411(e), states that, after the effective date of standards of performance promulgated under Section 111, it is unlawful for any owner or operator of any new source to operate the source in violation of any applicable standard of performance.

9. 40 CFR § 60.40a *et seq.*, Subpart Da, Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978, establishes, among other things, emission limitations and reporting requirements for particulate matter, opacity, sulfur dioxide (SO₂) and nitrogen oxides (NO_x).

10. 40 C.F.R. § 60.40a(b) states that an owner or operator subject to Subpart Da shall not exceed 20% opacity as a six-minute average, except for one six-minute period per hour of not more than 27% opacity.

11. 40 C.F.R. § 60.49a(b) states that an owner or operator subject to Subpart Da report to the Administrator of the U.S. EPA listed information for SO₂ and NO_x for each twenty-four hour period.

Title V

12. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), states that, after the effective date of any permit program approved or promulgated under Title V of the CAA, no source subject to Title V may operate the source except in compliance with its Title V permit.

13. U.S. EPA granted full approval to the Ohio Title V operating permit program on August 15, 1995. The program became effective on October 1, 1995. 60 Fed. Reg. 42045.

14. 40 CFR § 70.7(b) states that no source subject to Title V may operate the source except in compliance with a Title V permit.

15. 40 C.F.R. § 70.6(c) provides the requirements for compliance certifications contained in the Title V permit,

including, among other things, the status of compliance with the terms and conditions of the permit for the period covered by the certification, including whether compliance during the period was continuous or intermittent.

Prevention of Significant Deterioration and Ohio SIP

16. Section 165(a)(1) of the CAA, 42 U.S.C. § 7475(a)(1), states that a facility shall comply with emission limitations within permits issued under, and conforming with, the requirements of Part C.

17. 40 CFR § 52.21 prohibits the construction of a major stationary source or major modification unless the source receives a construction permit (i.e., permit to install) that includes specific requirements, including meeting each applicable limitation under the State Implementation Plan and each applicable emission standard and standard of performance under 40 CFR Parts 60 and 61 [40 CFR § 52.21(i) and (j)].

18. On January 29, 1981, U.S. EPA disapproved Ohio's PSD program and incorporated by reference the PSD regulations of 40 CFR 52.21(b) through (w) into the Ohio SIP at 40 CFR § 52.1884(a) and (b). On January 29, 1981, U.S. EPA delegated to Ohio the authority to implement the federal PSD program. 46 Fed. Reg. 9580 (effective on May 1, 1980).

19. On October 10, 2001, U.S. EPA conditionally approved revisions to the Ohio SIP to incorporate Ohio's PSD program, effective October 10, 2001. 66 Fed. Reg. 51570. On January 22, 2003, U.S. EPA granted final approval for Ohio's PSD program, effective March 10, 2003. 68 Fed. Reg. 2909. Ohio's approved PSD program is found at OAC 3745-31-01 through 3745-31-20.

20. U.S. EPA approved OAC 3745-31-05(A)(3) as part of the federally enforceable Ohio SIP on March 10, 2003. 68 Fed. Reg. 2909.

21. OAC 3745-31-05(A)(3) states, among other things, the director shall issue a permit to install or plan approval if he determines that the installation or modification and operation of the air contaminant source will employ the best available technology.

22. U.S. EPA approved OAC Chapter 3745-17-07(A)(1) as part of the federally enforceable Ohio SIP on June 27, 1994.

59 Fed. Reg. 27464.

23. OAC 3745-17-07(A)(1)(a) requires that visible particulate emissions from any stack shall not exceed twenty percent opacity, as a six-minute average. The visible particulate emissions from any stack may exceed 20% opacity, as a six-minute average, for not more than six consecutive minutes in any sixty minutes, but shall not exceed 60% opacity, as a six-minute average, at any time.

24. U.S. EPA approved OAC 3745-17-08(B) as part of the federally enforceable Ohio SIP on June 27, 1994.

59 Fed. Reg. 27464.

25. OAC 3745-17-08(B)(9) requires the prompt removal, in such a manner as to minimize or prevent resuspension, of earth or other material from paved streets onto which earth or other material has been deposited by trucking or earth moving equipment or erosion by water or other means.

26. U.S. EPA approved the OAC 3745-17-10(C)(1) as part of the federally enforceable Ohio SIP on June 27, 1994.

59 Fed. Reg. 27464.

27. OAC 3745-17-10(C)(1) states that any owner or operator of fuel burning equipment which is located within Lucas County shall operate said equipment so that the particulate emissions do not exceed 0.10 lb/MMBtu.

Enforcement

28. Section 113(a)(1-3) of the CAA, 42 U.S.C. § 7413(a)(1-3), authorizes the Administrator to initiate an enforcement action whenever, on the basis of any available information, the Administrator finds that any person has violated or is in violation of a requirement or prohibition of, among others, any implementation plan or permit, Title I or Title V of the CAA, or any rule promulgated, issued or approved under Title I or Title V of the CAA.

29. 40 CFR § 52.23 states that, among other things, failure to comply with any provisions of this part, any approved regulatory provision of a State implementation plan, any permit condition,

or with any permit limitation or condition contained within an operating permit, renders the person or governmental entity so failing to comply in violation of a requirement and subject to enforcement action under Section 113 of the CAA.

Toledo Edison Co., Bay Shore Power Plant's operations

30. Toledo Edison Co., Bay Shore Power Plant (Bay Shore) owns and operates three coal-fired boilers and one petroleum coke-fired boiler at 4701 Bay Shore Road, Toledo, Ohio. These include boilers #1 (B006), #2 (B002), #3 (B003), and #4 (B004), roadways and parking areas (F001), coal pile (F003), coal handling (F004), ash handling (F005), coke storage (F008), and transferring and conveying operation (F011).

31. Boiler #1 is located at a major source of air emissions, subject to the requirements of Title V, Section 502(a) of the CAA and 40 CFR § 70.7. The boiler is subject to 40 CFR § 60.40a et seq., and is a major source under Section 165 of the CAA and 40 CFR § 52.21, as incorporated into the Ohio SIP, and OAC 3745-31-02 of the Ohio SIP. The source was issued a permit to install number 04-01056 (PTI No. 04-01056) on July 31, 2003 for Boiler #1, in accordance with OAC 3745-31-02 and OAC 3745-31-05 of the Ohio SIP.

32. Boilers #2, #3 and #4 are located at a major source of air emissions, subject to the requirements of Title V, Section 502(a) of the CAA, applicable regulations at 40 CFR § 70.7 and the Ohio SIP.

33. The Ohio Environmental Protection Agency (OEPA) issued a final Title V permit numbered 04-48-02-0006 to Bay Shore on November 19, 2004, with an effective date of January 3, 2005 (Bay Shore's Title V permit).

34. Part I of Bay Shore's Title V permit requires compliance certifications concerning the terms and conditions contained in the permit to be submitted to the Director and the Administrator of the U.S. EPA specifying whether compliance was continuous or intermittent.

35. Bay Shore submitted an annual Title V compliance certification for the period from January 3, 2005 to December 31, 2005, on April 21, 2006.

36. Part III of Bay Shore's Title V permit requires Bay Shore boilers #1, #2, #3 and #4 to meet specific emissions limits and permit conditions. These include the following:

a. Boiler #1:

- i. Opacity shall not exceed 20% as a six-minute average, except for one six-minute period per hour of not more than 27% opacity. See also PTI No. 04-01056.
- ii. Visible particulate emissions from any stack shall not exceed twenty percent opacity, as a six-minute average. The visible particulate emissions from any stack may exceed 20% opacity, as a six-minute average, for not more than six consecutive minutes in any sixty minutes, but shall not exceed 60% opacity, as a six-minute average, at any time. See also OAC 3745-17-7(A).
- iii. CO emissions shall not exceed 278.6 lbs/hr at any load. See also PTI No. 04-01056.
- iv. CO emissions shall not exceed 0.28 lb/MMBtu actual heat input at half load. See also PTI No. 04-01056.
- v. CO emissions shall not exceed 0.20 lb/MMBtu actual heat input between three-quarter load and full load. See also PTI No. 04-01056.
- vi. CO emissions shall not exceed 0.13 lb/MMBtu actual heat input at full load. See also PTI No. 04-01056.
- vii. NOx emissions shall not exceed 529.3 lb/hr. See also PTI No. 04-01056.
- viii. SO₂ emissions shall not exceed 1897.6 lbs/hr. See also PTI No. 04-01056.
- ix. The permittee shall collect daily fuel samples and maintain daily records of the total

quantity of fuel burned, and the results of the analyses for sulfur content and heat content. See also PTI No. 04-01056.

b. Boiler #2, #3 and #4:

- i. Visible particulate emissions from any stack shall not exceed twenty percent opacity, as a six-minute average. The visible particulate emissions from any stack may exceed 20% opacity, as a six-minute average, for not more than six consecutive minutes in any sixty minutes, but shall not exceed 60% opacity, as a six-minute average, at any time. See also OAC 3745-17-7(A).
- ii. Particulate emissions shall not exceed 0.10 lb/MMBtu actual heat input. See also OAC 3745-17-10(C)(1).

37. Part III of Bay Shore's Title V permit requires permit conditions and other requirements on Bay Shore's coal pile, Unit F003. These include the requirement that the permittee perform inspections of each coal storage pile daily while in use.

38. Part III of Bay Shore's Title V permit requires permit conditions and other requirements on Bay Shore's coal handling, Unit F004. These include the requirement that the permittee perform inspections of each coal transfer point daily while in use.

39. Part III of Bay Shore's Title V permit requires permit conditions and other requirements on Bay Shore's ash handling, Unit F005. These include the requirement that the permittee shall perform daily checks, while the equipment is in operation, for any visible emissions of fugitive dust.

40. Part III of Bay Shore's Title V permit requires permit conditions and other requirements on Bay Shore's coke storage, Unit F008. These include the requirement that the permittee perform inspections of each petroleum coke storage pile daily.

41. Part III of Bay Shore's Title V permit requires permit conditions and other requirements on Bay Shore's transferring and conveying operation, Unit F011. These include the

requirement that the permittee perform daily checks, while the equipment is in operation, for any visible emissions of fugitive dust.

Violations

42. **ATTACHMENT A**, Table 1 to this notice provides a summary of excess emissions reported by Bay Shore as required by applicable regulations and its Title V permit.

43. Boiler #1

- a. Bay Shore reported a total of 1,056 minutes of opacity excess emissions, 4,980 minutes of CO excess emissions, 1,320 minutes of NO_x excess emissions, and 660 minutes of SO₂ excess emissions, in its quarterly excess emission reports during calendar years 2004 and 2005 for boiler #1.
- b. Bay Shore's failure to maintain continuous compliance with the applicable opacity emission limits at boiler #1 during, at least, calendar year 2004 is a violation of Bay Shore's Title V permit; Title V, Section 502(a) of the CAA, 40 CFR § 70.7(b), 40 CFR § 60.42a(b), PTI No. 04-01056 and OAC 3745-17-07(A).
- c. Bay Shore failed to maintain continuous compliance with applicable CO emission limits, based on lb/hr limits, and calculated for lb/MMBtu at rated capacity, at boiler #1 during, at least, calendar years 2004 and 2005.
 - i. Failure to maintain compliance with the 278.6 lbs/hr emission limit for CO is a violation of Bay Shore's Title V permit; Title V, Section 502(a) of the CAA, 40 CFR § 70.7(b), 40 CFR § 52.21 and PTI No. 04-01056.
 - ii. Failure to maintain compliance with the 0.28 lb/MMBtu actual heat input at half load, 0.20 lb/MMBtu actual heat input between three-quarter load and full load, and 0.13 lb/MMBtu actual heat input at full load for CO is a violation of Bay Shore's Title V permit;

Title V, Section 502(a) of the CAA, 40 CFR § 70.7(b), 40 CFR § 52.21 and PTI No. 04-01056.

- d. Bay Shore failed to maintain continuous compliance with applicable NO_x emission limits at boiler #1, based on reported emissions above the set span of analyzer, during, at least, calendar years 2004 and 2005 in violation of the 529.3 lbs/hr emission limit for NO_x in Bay Shore's Title V permit; Title V, Section 502(a) of the CAA, 40 CFR § 70.7(b) and PTI No. 04-01056.
- e. Bay Shore failed to maintain continuous compliance with applicable SO₂ emission limits, based on lb/hr limits, and calculated for lb/MMBtu at rated capacity, at boiler #1 during, at least, calendar years 2004 and 2005.
 - i. Failure to maintain compliance with the 1897.6 lbs/hr and 0.73 lb/MMBtu emission limit for SO₂ is a violation of Bay Shore's Title V permit; Title V, Section 502(a) of the CAA, 40 CFR § 70.7(b) and PTI No. 04-01056.
 - ii. Failure to maintain compliance with the 1.20 lb/MMBtu emission limit for SO₂ is a violation of 40 CFR § 60.43a(a)(1) and PTI No. 04-01056.
- f. Bay Shore reported continuous compliance with the applicable emissions limitations for boiler #1 during calendar year 2005.
 - i. Failure to report intermittent compliance with applicable opacity, CO, NO_x and SO₂ emissions limitations for boiler #1 is a violation of Bay Shore's Title V permit; Title V, Section 502(a) of the CAA and 40 CFR § 70.7(b).
- g. Bay Shore failed to collect fuel samples, maintain daily records, and report to the Administrator for each 24 hour period specified information related to SO₂ for boiler #1 during, at least: July 2, 3, 4, 5, 6, 7, 8, 16, 17, and 18; August 1, 2, 4, 5, 11, 12, 16, 20, 21, and 22; September 2 and 25; October 21, 30

and 31; November 24 and 25; and December 4, 5 and 30, 2005.

- i. Failure to collect the fuel samples and maintain the daily records as required in Bay Shore's Title V permit, is a violation of Bay Shore's Title V permit; Title V, Section 502(a) of the CAA and 40 CFR § 70.7(b).
- ii. Failure to report to the Administrator specified information related to SO₂ for each 24 hour period is a violation of Bay Shore's Title V permit, Title V, Section 502(a) of the CAA, 40 C.F.R. 70.7(b) and 40 CFR § 60.49a(b).

44. Boilers #2, #3 and #4

- a. Bay Shore reported a total of 22,104 minutes of opacity excess emissions in its quarterly excess emission reports during calendar years 2004 and 2005 for the common stack comprising boilers #2, #3 and #4.¹
- b. Bay Shore failed to maintain continuous compliance with applicable opacity emission limits at boilers #2, #3 and #4 during, at least, calendar year 2004 in violation of OAC 3745-17-07(A).
- c. Bay Shore failed to maintain continuous compliance with applicable opacity emission limits at boilers #2, #3 and #4 during, at least, calendar year 2005, in violation of Bay Shore's Title V permit; Title V, Section 502(a) of the CAA, 40 CFR § 70.7(b) and OAC 3745-17-07(A).
- d. Bay Shore reported continuous compliance with the applicable emissions limitations for boilers #2, #3 and #4 during calendar year 2005.

¹ Bay Shore's 2004 quarterly excess emission reports indicated that the opacity emission limit was 24% based upon the limit in the Variance to Permit to Operate Application No. 0448020006B001 granted by OEPA in 1994. U.S. EPA finds that this variance was not a federally approved equivalent visible emission limitation and, therefore, further finds that the applicable opacity limit for 2004 was 20% as established in OAC 3745-17-07(A). If further investigation reveals that Bay Shore Units 2-4 emitted between 20% to 24% opacity, U.S. EPA will bring additional violations.

- i. Failure to report intermittent compliance with applicable opacity emissions limitations for boilers #2, #3 and #4 is a violation of Bay Shore's Title V permit; Title V, Section 502(a) of the CAA and 40 CFR § 70.7(b).

45. Boiler #4

- a. Bay Shore failed to demonstrate compliance with the PM emission rate of 0.10 lb/MMBtu actual heat input for boiler #4 on at least June 2, 2004; December 15, 2004; and April 4, 2006. Emissions were calculated based on a prorated determination of emission testing performed on boilers #2 and #3 on December 16, 2003, versus testing of all boilers performed on June 2, 2004; December 15, 2004; and April 4, 2006. Calculated test results for boiler #4 on June 2, 2004 were 0.1012 lb/MMBtu average at rated capacity; on December 15, 2004 were 0.1302 lb/MMBtu average at rated capacity; and April 4, 2006 were 0.1524 lb/MMBtu average at rated capacity. These test results constitute continuing violations of the 0.10 lb/MMBtu emission limit.
- b. Bay Shore's failure to maintain compliance with the 0.10 lb/MMBtu emission rate for PM, established in Bay Shore's Title V permit, is a violation of Bay Shore's Title V permit; Title V, Section 502(a) of the CAA, 40 CFR § 70.7 and OAC 3745-17-10(C)(1).

46. Bay Shore failed to promptly remove material tracked onto paved roadways and parking areas (Unit F001) on at least April 5, 2006, in violation of PTI 04-01056 and OAC 3745-17-08(B)(9).

47. Bay Shore failed to perform daily inspections on coal pile (Unit F003) when the unit was in operation on, at least, February 21, March 31, 2005, in violation of Bay Shore's Title V permit; Title V, Section 502(a) of the CAA and 40 CFR § 70.7(b).

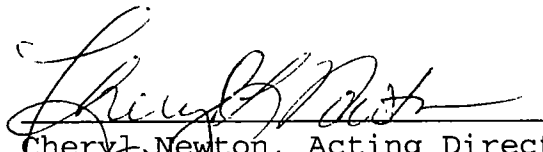
48. Bay Shore failed to perform daily inspections at coal handling operations (Unit F004) when the equipment was in operation during, at least, April 1, June 24, 2005, in violation of Bay Shore's Title V permit; Title V, Section 502(a) of the CAA and 40 CFR § 70.7(b).

49. Bay Shore failed to perform daily visible emission inspections of the ash handling operations (Unit F005) when equipment was in operation on, at least, July 7, 12, 13 and 19, October 1, 15, 22 and 27, November 26, and December 9, 14, 15, 19, 27 and 30, 2005, in violation of Bay Shore's Title V permit; Title V, Section 502(a) of the CAA and 40 CFR § 70.7(b).

50. Bay Shore failed to perform daily inspections of the coke storage area (Unit F008) on, at least, January 3 through 11, 13 through 31, February 1 through 26, and March 21, 2005, in violation of Bay Shore's Title V permit; Title V, Section 502(a) of the CAA and 40 CFR § 70.7.

51. Bay Shore failed to perform daily inspections of the transferring and conveying operation (Unit F011) when the equipment was in operation on, at least, July 3 through 9, August 14 through 20 and 28 through 31, September 1, 2 and 3, October 17, and December 3, 2005, in violation of Bay Shore's Title V permit; Title V, Section 502(a) of the CAA and 40 CFR § 70.7(b).

6/15/06
Date


Cheryl Newton, Acting Director
Air and Radiation Division

CERTIFICATE OF MAILING

I, Loretta Shaffer, certify that I sent a Notice and Finding of Violation, No. EPA-5-06-OH-10, by Certified Mail, Return Receipt Requested, to:

Steven Smith, Director
Toledo Edison Co., Bay Shore Power Plant
4701 Bay Shore Road
Toledo, OH 43616

I also certify that I sent copies of the Finding of Violation and Notice of Violation by first class mail to:

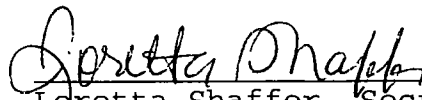
Robert Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Agency
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216-1049

Karen Granata, Administrator
City of Toledo Division of Environmental Services
348 South Erie Street
Toledo, Ohio 43602

And

Anthony J. Alexander, President
FirstEnergy Corp.
76 South Main Street
Akron, OH 44308

on the 15th day of June, 2006.


Loretta Shaffer, Secretary
AECAS, (MN/OH)

CERTIFIED MAIL RECEIPT NUMBER: 70010320 000589193277